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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,707	09/19/2003	Ralph de la Torre	MED-019	1994
36822 7590 06/01/2007 GORDON & JACOBSON, P.C. 60 LONG RIDGE ROAD SUITE 407 STAMFORD, CT 06902			EXAMINER REIMERS, ANNETTE R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	Application No. 10/666,707	Applicant(s) DE LA TORRE ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10, 11, 17, 20 and 21 is/are rejected.
- 7) ☒ Claim(s) 12-16, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

The election/restriction of August 11, 2005 has been vacated due to applicant's amendment to claim 13, wherein claim 13 has been changed from an independent to a dependent claim. As a result, claims 13-16 and 18-19 have been rejoined with claims 1-12, 17 and 20-21.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8, 10-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonutti (US Patent Number 5,980,559) in view of Donnelly et al. (US Patent Number 6,773,436).

Bonutti discloses various embodiments of a surgical retractor for use within a body cavity, comprising an elongate swivel, e.g. 20b, having a first end and a second end, wherein the first end of the swivel has a keyway means for engaging a key, e.g. 74b, on a deployment tool. Examiner would like to point out that the means for language of claim 1 has not been interpreted under 35 U.S.C. 112 6<sup>th</sup> paragraph, since the means for has been modified by sufficient structure, i.e. a key, for achieving the specified function. A first length of string, e.g. 34b, extends from the first end of the

Art Unit: 3733

swivel and a second length of string, e.g. 38b, extends from a point substantially midway between the first end and the second end wherein the second length of string has a free end which does not re-enter the swivel (see figure 7), wherein the visually distinguishable first and second lengths of string having sufficient length such that either may be pulled from outside the body cavity, such that pulling on the second length of string is capable of causing the swivel to swivel off of the key on the deployment tool and be oriented substantially perpendicular to the second length of string, and pulling on the first length of string to be oriented substantially coaxial to the first length of string (see figure 7 and column 9, lines 24-29). The swivel is substantially cylindrical with a curved first end and the second end being substantially conical (see figure 7). The swivel has a surface groove (see figure 7) extending substantially from the first end to the point substantially midway between the first end and the second end, the surface groove having a depth sufficient to receive the second string (see figure 7). The swivel has an outer surface, an axial bore extending from the first end to the point substantially midway between the first end and the second end, and a radial bore extending from the axial bore to the surface at the point substantially midway between the first end and the second end (see figure 7). The first and second lengths of string are part of a single length of string passing through the axial and radial bores (see figure 7). The first and second lengths of string are joined together where the axial bore intersects the radial bore (see figure 7).

The surgical retractor device of Bonutti further comprises a hollow tube, e.g. 66b, having a proximal end and a distal end, the first end of the swivel being removably

Art Unit: 3733

mounted in the distal end of the tube, and a pushrod, e.g. 72b, having a proximal end and a distal end, the pushrod extending through the hollow tube with the distal end of the pushrod facing the first end of the swivel (see figure 7).

Bonutti discloses the claimed invention except the swivel having a non-circular keyway. Donnelly et al. disclose various embodiments of a surgical retractor for use within a body cavity, comprising an elongate swivel, e.g. 10, having a first end and a second end, wherein the first end of the swivel has a non-circular elongate, keyway, e.g. 30, means for engaging a key on a deployment tool (see figures 1A-1B). Donnelly et al. teach the use of such a dimensioned keyway to mechanically deflect the bone anchor with the deployment tool (see column 4, lines 43-61). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Bonutti with the swivel having a non-circular keyway in view of Donnelly et al., to mechanically deflect the bone anchor with the deployment tool.

Regarding claim 5, Bonutti discloses the claimed invention except the swivel having a reduced diameter portion adjacent to the first end. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the swivel of Bonutti with a reduced diameter portion adjacent to the first end, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a pivotable elongate member/swivel. In re Dailey and Eilers, 149 USPQ 47 (1966). In addition, Bonutti

Art Unit: 3733

discloses an embodiment (see figure 10) where the swivel has a reduced diameter portion adjacent to the first end.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bonutti (US Patent Number 5,980,559) in view of Donnelly et al. (US Patent Number 6,773,436) further in view of Pedlick et al. (US Patent Number 5,961,538), previously cited by examiner.

Bonutti discloses the claimed invention except for the first length of string and the second length of string being different colors. Pedlick et al. discloses a surgical retractor device comprising sutures of different colors and teaches "the sutures being identifiable by color such that the suture can be distinguished from other sutures of other colors" (see column 5, lines 41-43). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Bonutti with the first length of string and the second length of string being different colors, in view of Pedlick et al., in order to identify/distinguish the first length of string from the second length of string.

#### ***Allowable Subject Matter***

Claims 12-16 and 18-19 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5-8 and 10-21 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3733

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*AR*

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER